



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

June 15, 1966

Honorable Don Nugent
District Attorney
Winkler County Courthouse
Kermit, Texas

Opinion No. C-710

Re: Where a husband fails to pay child support pursuant to a divorce decree, is it the duty of the District Clerk to prepare and file papers citing the husband for contempt of Court, and is it the duty of the County or District Attorney to represent the wife at such hearing?

Dear Mr. Nugent:

By your recent letter you request an opinion of this office concerning the following facts:

- (1) Two parties are divorced in this county. Both continue to live here with the wife having custody of the children and the husband having been ordered to pay child support. The husband discontinues the payment of such support. A practice in this judicial district has developed which allows the wife to have the forms, citing the husband for contempt, prepared by the District Clerk. The District Judge then sets the contempt motion for hearing and requires either the District or County Attorney to represent the wife at such hearing.

Concerning the above, you have asked the following questions:

- (1) Is it the duty of the District Clerk to accept, prepare, and file the complaint on behalf of the wife in a case of this nature?
- (2) Is it the duty of the County or District Attorney to represent the wife in a case such as this?

Article 4639a, Vernon's Civil Statutes, provides in part as follows:

"The court may by judgment order either parent to make periodical payments for the benefit of such child or children, until same have reached the age of eighteen (18) years, or, said court may enter a judgment in a fixed amount for the support of such child or children, and such court shall have full power and authority to enforce said judgments by civil contempt proceedings after ten (10) days notice to such parent of his or her failure or refusal to carry out the terms thereof, and for the purpose of ascertaining the ability of the parents of such child or children to contribute to the support of same, they may be compelled to testify fully in regard thereto, under penalty of contempt of court, as in other cases."

Under the above cited statute, the remedy for the husband's failure to pay child support is civil in nature, and no authority can be found which obligates the District Clerk to prepare petitions, motions or citations for contempt for individual parties in civil cases. The District Clerk, of course, must accept and file petitions and motions of this nature as part of his duties. Neither can any authority be found that obligates the District or County Attorney to represent individual parties in a civil action. However, in contempt proceedings in child support cases, if the Judge of the Court appoints either the District or County Attorney to advise with and represent the claimant, under the provisions of Rule 308-A, Vernon's Texas Rules of Civil Procedure, it then becomes their duty to advise with and represent the claimant.

Your letter specifically excluded any questions relating to the Uniform Reciprocal Child Support Act.

SUMMARY

(1) It is not the duty of the District Clerk to prepare petitions, motions, or complaints of a civil nature for individual parties.

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(2) It is not the duty of the County or District Attorney to represent individual parties in a civil action. However, in contempt proceedings in child support cases, if the Judge of the Court appoints either the District or County Attorney to advise with and represent the claimant, under the provisions of Rule 308-A, Vernon's Texas Rules of Civil Procedure, it then becomes their duty to advise with and represent the claimant.

Very truly yours,

WAGGONER CARR
Attorney General

By: Thomas W. Mack
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TWM/er

APPROVED:

OPINION COMMITTEE
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